

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Firstcal Industrial 2 Acquisition)	
	Map 134-00-0, Parcel 287.00)	Davidson County
	Commercial Property)	
	Tax Years 2006 & 2007)	

INITIAL DECISION AND ORDER

Statement of the Case

Appeals have been filed on behalf of the property owner with the State Board of Equalization on September 25, 2006 for the 2006 tax year and on October 1, 2007, for the 2007 tax year. The subject property is presently valued as follows, for both tax years:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$394,700	\$1,825,800	\$2,220,500	\$888,200

These matters were reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. The hearing was conducted on December 4, 2007¹ at the Davidson County Property Assessor's Office. Present at the hearing were registered agent, Mr. L. Stephen Nelson, for the taxpayer, and Mr. Derrick Hammond, TMA, Appraiser, Metro. Property Assessor's Office of Davidson County.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a commercial tract used as a warehouse and commonly known as 401 Airpark Center Drive, in Nashville, Davidson County, Tennessee. The building contains a total net rentable area of 52,748 square feet. The subject property was constructed in 1989 and sits on a 3.02 acre tract of land.

The taxpayer's representative contends that the warehouse has a value of \$2,067,500 for tax year 2006 and \$1,878,600 for tax year 2007. Mr. Nelson supports his contention of value by using two approaches to value property. The property is almost 20 years old so no cost approach was considered and the sales comparison approach was not given much weight. Mr. Nelson also stated that "as this is income producing property, the income approach is the most appropriate tool for a determination of value". Mr. Nelson produced a multi-paged exhibit² that included the actual income and expense history for the subject property under review with industrial rent comparables. Mr. Nelson's

¹ Mr. Nelson stated that he wanted the initial decision and order to cover both tax years and the county agreed.

² Labeled as Taxpayer's Exhibit #1 for the technical record.

exhibit also includes a market analysis of Nashville's Industrial Market. (Mr. Hammond pointed out that Mr. Nelson's fee was proportionally related to the outcome of the case so the testimony should be evaluated accordingly.³)

The assessor contends that the property should remain valued at \$2,220,500 based on the presumption of correctness that attaches to the decision of the Davidson County Board of Equalization. Mr. Hammond's multi-paged exhibit, while discussing all three approaches to value, supports the Board's opinion of value. Due to the age of this property, the cost approach should be given little or no weight in the final reconciliation of the value assessments.

In making the final reconciliation of value the taxpayer's representative, Mr. Nelson, believes that the sales comparison approach should be given 25% and the income capitalization approach 75%; the county's representative, Mr. Hammond, believes since he was able to obtain good data and reliable figures that each approach, excluding the cost approach, should be given equal weight in the final analysis for the expression of the opinion of value.

The germane issue is the fair market value of the property as of January 1, 2006 and as of January 1, 2007. The basis of valuation as stated in T.C.A. § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values"

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of **market value for ad valorem tax purposes** is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 2 1-22.

³ See *Gap, Inc.*, IDO, Sumner County, 2006, p.3 where Administrative Judge Mark Minsky held that when a witness presumably has a *direct or indirect financial interest in the outcome of an appeal the testimony can be considered biased*, he further stated, '*the testimony of such a representative or witness lacks probative value and must be rejected in its entirety*'.

(emphasis supplied) *Gap Inc.*, (Sumner Co., Tax Year 2006),
page 2.

Since the taxpayer is appealing from a determination by the Davidson County Board of Equalization the burden of proof in this matter falls on the taxpayer. *Big Fork Mining Company v. Tennessee Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981) and Rule 0600-1-.11(1) State Board of Equalization.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should remain valued at \$2,220,500. In a review of the exhibits and arguments submitted the administrative judge finds that the County's argument is more persuasive.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax years 2006 and 2007:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$394,700	\$1,825,800	\$2,220,500	\$888,200

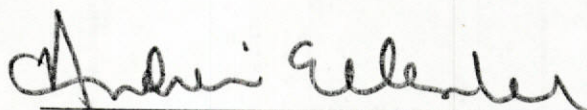
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 18th day of January, 2008.

A handwritten signature in dark ink, appearing to read "Andrei Ellen Lee", written over a horizontal line.

ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. L. Stephen Nelson
Jo Ann North, Property Assessor